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6 CENTER FOR ENVIRONMENTAL
HEALTH

FILED

OCT - 9 2009

KIM TURNER, Court Executive Officer
MARIN COUNTY SUPERIOR COURT

By: J. Dale, Deputy

8 SUPERIOR COURT OF THE STATE OF CALIFORNIA

9 COUNTY OF MARIN

11 CENTER FOR ENVIRONMENTAL HEALTH,)

12 Plaintiff,)

13 v.)

14 AMERICAN-DE ROSA LAMPARTS, INC., *et*)
15 *al.*,)

16 Defendants.)

Case No. CV-081722

**[PROPOSED] AMENDED CONSENT
JUDGMENT AS TO DEFENDANT
MINKA LIGHTING, INC.**

1 **1. INTRODUCTION**

2 **1.1** On April 9, 2008, plaintiff Center for Environmental Health (“Plaintiff”),
3 acting in the public interest, filed a complaint in Marin County Superior Court, entitled *Center*
4 *for Environmental Health v. Minka Lighting, Inc., et al.*, Marin County Superior Court Case
5 Number CV081722 (the “Action”), for civil penalties and injunctive relief pursuant to the
6 provisions of California Health & Safety Code §25249.5 *et seq.* (“Proposition 65”).

7 **1.2** Minka Lighting, Inc. (identified herein as “Minka”) is a corporation that
8 employs 10 or more persons and that manufactured, distributed and/or sold light fixtures in the
9 State of California. Plaintiff and Minka are referred to collectively herein as the “Parties.”

10 **1.3** For purposes of this Amended Consent Judgment, the term “Covered
11 Product” shall mean any lighting fixture that contains lead solder or other lead-containing
12 materials in a manner such that the lead would be touched during ordinary installation, cleaning,
13 maintenance, or use. For purposes of this definition, a “fixture” is any piece of lighting
14 equipment (including all component parts thereof) that has been attached to the inside or outside
15 of a building or otherwise attached to real estate.

16 **1.4** On or about January 8, 2008, Plaintiff served Minka and the appropriate
17 public enforcement agencies, including the California Attorney General, the District Attorneys
18 of every county in California, and the City Attorneys of every California city with a population
19 greater than 750,000, with the requisite 60-day notice that Minka was in violation of Proposition
20 65. Plaintiff’s notice and the Complaint in this Action allege that Minka exposes individuals
21 who use or otherwise handle the Covered Products to lead and/or lead compounds (referred to
22 interchangeably herein as “Lead”), chemicals known to the State of California to cause cancer,
23 birth defects and other reproductive harm, without first providing clear and reasonable warning
24 to such persons regarding the carcinogenicity and reproductive toxicity of Lead. The notice and
25 Complaint allege that Minka’s conduct violates Health & Safety Code §25249.6, the warning
26 provision of Proposition 65.

27 **1.5** On October 29, 2008, the Court approved a Consent Judgment between
28 Plaintiff and Minka that resolved Plaintiff’s claims against Minka in the Action. Section 4.1 of

1 the Consent Judgment provides, "This Consent Judgment may be modified by written agreement
2 of Plaintiff and Minka, or upon motion of Plaintiff or Minka as provided by law." The parties
3 have agreed to a modification of the Consent Judgment, as reflected in this Amended Consent
4 Judgment, that will: (a) provide Minka with the option of providing a clear and reasonable
5 warning regarding the presence of Lead in the Products instead of reformulating the Products;
6 and (b) require Minka to pay an additional \$12,500 to CEH.

7 **1.6** For purposes of this Amended Consent Judgment only, the parties
8 stipulate that this Court has jurisdiction over the subject matter of the violations alleged in the
9 Complaint and personal jurisdiction over Minka as to the acts alleged in the Complaint, that
10 venue is proper in the County of Marin, and that this Court has jurisdiction to enter this
11 Amended Consent Judgment as a full and final resolution of all claims which were or could have
12 been raised in the Complaint against Minka based on the facts alleged therein.

13 **1.7** The Parties enter into this Amended Consent Judgment pursuant to a
14 settlement of certain disputed claims between the Parties as alleged in the Complaint. By
15 executing this Amended Consent Judgment, the Parties do not admit any facts or conclusions of
16 law. It is the Parties' intent that nothing in this Amended Consent Judgment shall be construed
17 as an admission by the Parties of any fact, conclusion of law, issue of law or violation of law, nor
18 shall compliance with the Amended Consent Judgment constitute or be construed as an
19 admission by the Parties of any fact, conclusion of law, issue of law, or violation of law.
20 Nothing in this Amended Consent Judgment shall prejudice, waive or impair any right, remedy,
21 argument or defense the Parties may have in this or any other or future legal proceedings.

22 **2. COMPLIANCE**

23 **2.1** For purposes of this Amended Consent Judgment only, the Reformulation
24 Standard means that: (a) the solder used on the Covered Products contains no more than 200
25 parts per million ("ppm") Lead; and (b) any other component of the Covered Products that is
26 likely to be touched, contacted or handled by a Covered Product user during ordinary
27 installation, cleaning, maintenance, or use of the Covered Products, including but not limited to
28 the glass plates and metal frames of the Covered Products, contain no more than 600 ppm Lead.

1 **2.2** As of the date of entry of this Amended Consent Judgment (the
2 “Compliance Date”), Minka shall use its best efforts to ensure that any Covered Products it
3 manufactures, distributes, ships, or sells, or causes to be manufactured, distributed, shipped or
4 sold, do not contain Lead in concentrations that exceed the Reformulation Standard. However,
5 Minka shall not be under any obligation to meet the Reformulation Standard with respect to the
6 Covered Products that comply with the requirements of Section 2.3 below.

7 **2.3** As of the Compliance Date, Minka shall not manufacture, distribute, ship,
8 or sell, or cause to be manufactured, distributed, shipped or sold, any Covered Product that
9 contains Lead in concentrations that exceed the Reformulation Standard unless:

10 (A) Such Covered Product bears a label containing the following
11 warning language:

12 “WARNING! This lighting fixture contains lead, a chemical known to cause
13 cancer and birth defects or other reproductive harm. Wash hands
14 with soap and water after installing, handling, cleaning or
15 otherwise touching this light fixture.”

16 (B) Minka has provided written notification to the person or entity to
17 whom the Covered Product is sold or distributed for sale that such person or entity must not
18 remove, deface or obscure the warning required by this section; and

19 (C) The warning on the Covered Product states that the person or
20 entity to whom the Covered Product is sold or distributed for sale shall not remove, deface or
21 obscure the Warning Statement.

22 **2.4** The warning statement required by section 2.3 shall be prominently
23 displayed on the front of the outside of the packaging, and shall be displayed in a separate
24 outlined box set apart from any other print and that contains no other language. The warning
25 must be displayed with such conspicuousness, as compared with other words, statements, or
26 designs as to render it likely to be read and understood by an ordinary individual. The warning
27 statement shall not be preceded, followed, or surrounded by words, symbols, or other matter that
28 reduces its conspicuousness or that introduces, modifies, qualifies, or explains the required text,

1 such as “legal notice required by law.”

2 **2.5 Certification of level from suppliers.** For any Covered Products for
3 which Minka is not providing the warning statement required by section 2.3, Minka shall obtain
4 written certification with corresponding test results from its suppliers of the Covered Products
5 certifying that the Covered Products meet the Reformulation Standard.

6 **2.6 Plaintiff’s Confirmatory Testing.** Plaintiff may, at its discretion,
7 conduct periodic testing of the Covered Products. Any such testing will be conducted pursuant
8 to the Test Protocol attached hereto as Exhibit A at an independent laboratory. In the event that
9 Plaintiff’s testing demonstrates Lead levels in excess of the Reformulation Standard for one or
10 more Covered Products that do not contain the warning statement required by section 2.3,
11 Plaintiff shall inform Minka of the violation(s), including information sufficient to permit Minka
12 to identify the Covered Product(s). Plaintiff and Minka shall then meet and confer in an attempt
13 to informally resolve the alleged violation. Should the parties be unable to informally resolve
14 the alleged violation within 30 days, Plaintiff may thereafter file a motion to enforce this
15 Amended Consent Judgment pursuant to Section 5.

16 **2.7 Stipulated Penalties.** In addition to any other remedies provided by law,
17 Minka shall be liable for stipulated penalties if it fails to provide a warning statement for a
18 Covered Product that exceeds the Reformulation Standard. The stipulated penalty shall be as
19 follows for each sale of Covered Product for which Plaintiff produces a test result with Lead
20 levels exceeding the Reformulation Standard and evidence that the Covered Product did not
21 include a warning statement:

22	First Occurrence:	\$1000
23	Second Occurrence:	\$1500
24	Third Occurrence:	\$2000
25	Thereafter:	\$2,500

26 For purposes of this section 2.7, a “sale” and an “occurrence” shall mean a sales transaction by
27 Minka with a specific customer after the Compliance Date regardless of the number of units that
28 were sold in such particular sales transaction. Submission of multiple test results for the same

1 style of product sold pursuant to a single purchase order shall be considered a single sale and a
2 single occurrence. Minka shall not be in violation of this Amended Consent Judgment if the
3 product for which Plaintiff may produce a noncompliant test result was manufactured,
4 distributed, shipped or sold by Minka before the date of service of the 60-day notice described in
5 paragraph 1.4.

6 **3. SETTLEMENT PAYMENTS**

7 **3.1** In addition to the payments Minka already made under the Consent
8 Judgment, within 20 days of the Court's entry of this Amended Consent Judgment, Minka shall
9 pay the sum of \$12,500 as a settlement payment. This total shall be paid in two separate checks
10 delivered to the offices of the Lexington Law Group, LLP at the address set forth in section 12
11 below and made payable and allocated as follows. Any failure by Minka to comply with the
12 payment terms herein shall be subject to a stipulated late fee in the amount of \$100 for each day
13 after the delivery date the payment is received. The late fees required under this section shall be
14 recoverable, together with reasonable attorneys' fees, in an enforcement proceeding brought
15 pursuant to section 5 of this Amended Consent Judgment.

16 **3.1.1 Monetary Payment in Lieu of Penalty:** \$4,150 shall be paid to
17 CEH in lieu of any penalty pursuant to Health and Safety Code § 25249.7(b). This payment
18 shall be made by check payable to Center for Environmental Health. CEH shall use such funds
19 to continue its work protecting people from exposures to toxic chemicals. As part of this work,
20 CEH intends to conduct periodic testing of the Products as set forth in section 2.6.

21 **3.1.2 Attorneys' Fees and Costs:** \$8,350 shall be used to reimburse
22 CEH and its attorneys for their reasonable investigation fees and costs, attorneys' fees, and any
23 other costs incurred as a result of investigating, bringing this matter to Minka's attention,
24 litigating and negotiating a settlement in the public interest. This payment shall be made by
25 check payable to Lexington Law Group, LLP.

26 **4. MODIFICATION OF CONSENT JUDGMENT**

27 **4.1** This Amended Consent Judgment may be modified by written agreement
28 of Plaintiff and Minka, or upon motion of Plaintiff or Minka as provided by law.

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5. ENFORCEMENT OF CONSENT JUDGMENT

5.1 Plaintiff may, by motion or application for an order to show cause before the Superior Court of the County of Marin, enforce the terms and conditions contained in this Amended Consent Judgment. Should Plaintiff prevail on any motion or application under this section, Plaintiff shall be entitled to its reasonable attorneys' fees and costs associated with such motion or application.

6. APPLICATION OF CONSENT JUDGMENT

6.1 This Amended Consent Judgment shall apply to and be binding upon the parties hereto, their divisions, subdivisions and subsidiaries, and the successors or assigns of any of them.

7. CLAIMS COVERED

7.1 This Amended Consent Judgment is a full, final and binding resolution between Plaintiff and Minka of any violation of Proposition 65 that could have been asserted against Minka in the Complaint based on Minka's failure to warn about exposure to Lead contained in the Covered Products, with respect to any Covered Products manufactured, distributed or sold by Minka on or prior to the date of entry of this Amended Consent Judgment. This release does not limit or effect the obligations of any party created under this Amended Consent Judgment.

8. SEVERABILITY

8.1 In the event that any of the provisions of this Amended Consent Judgment are held by a court to be unenforceable, the validity of the enforceable provisions shall not be adversely affected.

9. SPECIFIC PERFORMANCE

9.1 The parties expressly recognize that Minka's obligations under this Amended Consent Judgment are unique. In the event that Minka is found to be in breach of this Amended Consent Judgment for failure to comply with the provisions of Section 2 hereof, the parties agree that it would be extremely impracticable to measure the resulting damages and that

1 such breach would cause irreparable damage. Accordingly, Plaintiff, in addition to any other
2 available rights or remedies, may sue in equity for specific performance, and Minka expressly
3 waives the defense that a remedy in damages will be adequate.

4 **10. GOVERNING LAW**

5 **10.1** The terms of this Amended Consent Judgment shall be governed by the
6 laws of the State of California.

7 **11. RETENTION OF JURISDICTION**

8 **11.1** This Court shall retain jurisdiction of this matter to implement and enforce
9 the terms this Amended Consent Judgment.

10 **12. PROVISION OF NOTICE**

11 **12.1** All notices required pursuant to this Amended Consent Judgment and
12 correspondence shall be sent to the following:

13 For Plaintiff:

14 Howard Hirsch
15 Lexington Law Group, LLP
16 1627 Irving Street
San Francisco, CA 94122

17 For Minka:

18 Minka Lighting, Inc.
19 Attn: Peter Decsy
1151 Bradford Court
20 Corona, CA 92882

21 With a copy to:

22 Gregory P. Goonan
23 The Affinity Law Group APC
600 West Broadway, Suite 400
San Diego, CA 92101-3352

24 **13. COURT APPROVAL**

25 **13.1** If this Amended Consent Judgment is not approved by the Court, it shall
26 be of no further force or effect.

27 **14. EXECUTION AND COUNTERPARTS**

28 **14.1** The stipulations to this Amended Consent Judgment may be executed in


1 counterparts and by means of facsimile, which taken together shall be deemed to constitute one
2 document.

3 **15. AUTHORIZATION**

4 **15.1** Each signatory to this Amended Consent Judgment certifies that he or she
5 is fully authorized by the party he or she represents to stipulate to this Amended Consent
6 Judgment and to enter into and execute the Amended Consent Judgment on behalf of the party
7 represented and legally bind that party. The undersigned have read, understand and agree to all
8 of the terms and conditions of this Amended Consent Judgment. Except as explicitly provided
9 herein, each party is to bear its own fees and costs.

10 **AGREED TO:**

11 CENTER FOR ENVIRONMENTAL HEALTH

12 
13 _____
14 Michael Green, Executive Director
Center for Environmental Health

Dated: 10/15/09

15 MINKA LIGHTING, INC.

16 _____

17 _____
18 _____
19 Printed Name

Dated: _____

20 _____
21 Title

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10 **AGREED TO:**

11 **CENTER FOR ENVIRONMENTAL HEALTH**

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Michael Green, Executive Director
Center for Environmental Health

Dated: _____

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MINKA LIGHTING, INC.

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PETER DECSTY

19

Printed Name

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VPGM

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Title

Dated: 9/18/09

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ED

ORDER AND JUDGMENT

Based upon the stipulated Amended Consent Judgment between Plaintiff and Minka, the settlement is approved and judgment is hereby entered according to the terms herein.

Dated: OCT - 9 2009

VERNA ADAMS
Judge, Superior Court of the State of California

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Exhibit A
(Test Methodology)

The following protocol shall be applied separately to each component of the Covered Product:

- a) Comminute a small, representative, and discreet portion of the material to be analyzed.
- b) Prepare the sample for analysis using microwave digestion. Microwave digestion protocols from either of the following two methods may be used provided that the samples are completely digested:
 1. AOAC Official Method 999.10 (Lead, Cadmium, Zinc, Copper, and Iron in Foods)
 2. NIOSH 7082 (Lead by Flame AAS) Appendix – Microwave Digestion for Lead in Paint Chips (and other matrices)
- c) Analyze the sample for total Lead (Pb) content using Graphite Furnace Atomic Absorption Spectrophotometry (GFAAS) or Inductively Coupled Plasma Mass Spectrometry (ICP-MS) using standard operating procedures.
- d) Lead content shall be expressed in parts per million (ppm).